SALES—FRAUDULENT CONVEYANCES—BULK SALES ACT.—The owner and operator of a lunch wagon sold it together with the furniture, fixtures, appliances and supplies connected therewith. In a suit by a creditor to avoid the sale as against the Bulk Sales Act providing that: "The sale in bulk of any part or the whole of a stock of merchandise otherwise than in the ordinary course of trade . . . shall be fraudulent and void as against creditors of the seller," *held,* the Act did not apply. *Lewis, Hubbard & Co.* v. *Loughran* (W. Va. 1919) 101 S. E. 465.

Since such bulk sales acts are in derogation of the common law right of a person to alienate his property without restriction, they are construed strictly with a view towards remedying the precise evil intended to be reached. *Cooney, Eckstein & Co.* v. *Sweat* (1909) 133 Ga. 511, 66 S. E. 257. Thus the courts in construing similar statutes have generally restricted the words "goods, wares, and merchandise" or "stocks of merchandise" to those goods actually held out for sale, *Johnson* v. *Kelly* (1915) 32 N. D. 116, 155 N. W. 683, and therefore have refused to hold within the Act a sale of all the property of a livery stable business including the horses, wagons, and harness; *Everett Prod. Co.* v. *Smith Bros.* (1905) 40 Wash. 566, 82 Pac. 905; or the sale of a billiard and pool business including all its usual equipment; In*dependent Breweries Co.* v. *Lawton* (Mo. 1918) 204 S. W. 730; or the sale by a cobbler of all his shoe repairing appliances, although the goods contained a small quantity of shoe laces, polishes and brushes which he occasionally sold; *Swanson* v. *DeVine* (Utah 1916) 160 Pac. 872; on the ground that the "goods, wares and merchandise" sold were primarily for use in the business conducted. The contention that this is the differentiation which the courts have made is strengthened by the fact that where an entire business is sold consisting of both goods held out for sale and chattels and fixtures used in the business, the courts hold that the Act applies only to the former. Thus, in the sale of a saloon and dance hall business, the Act was held to apply only to the stock of liquors sold. *Marshon* v. *Toohey* (1915) 38 Nev. 248, 148 Pac. 357; *contra, Parham & Co.* v. *Potts-Thompson Liquor Co.* (1907) 127 Ga. 303, 56 S. E. 460. Nor are such acts applicable to a business which does not handle goods for sale at all, such as an employment agency; *Heslop* v. *Golden* (1915) 189 Ill. App. 388; or where the selling of the goods is merely incidental to an establishment whose chief purpose is the application of skill and labor in the production of a substantially new article. *Connecticut Steam Brown Stone Co.* v. *Lewis* (1912) 86 Conn. 386, 85 Atl. 534. The instant case seems to fall within the principles laid down by the preceding authorities. The articles sold by the defendant were clearly not a "stock of merchandise" within the meaning of the Act.

SPECIFIC PERFORMANCE—MUTUALITY—SUIT BY ASSIGNEE OF THE PURCHASER.—In an action to compel specific performance of a contract for the sale and purchase of real estate, brought by the assignee of the purchaser in his own name, *held,* in two recent New York cases, that such relief would lie. *Epstein* v. *Gluckin* (Sup. Ct. 1919) 109 Misc. 184, 179 N. Y. Supp. 221; *Schuyler* v. *Kirk Brown Realty Co.* (Sup. Ct. 1919) 178 N. Y. Supp. 568.

The rule of mutuality merely demands that the court can enforce its decree against both parties litigant, and give to them all they are entitled to receive under their contract, in exchange for their performance. See 16 Columbia Law Rev. 443. Thus while the court

will not decree specific performance at the suit of an infant, as his power of repudiation renders the court unable to enforce effectually its decree; *Flight* v. *Bolland* (1828) 4 Russ. 298; nor where one of the essential terms of the agreement sued on is of such a nature that equity cannot specifically enforce it and so cannot exact performance of both parties, *Roller* v. *Weigle* (D. C. 1919) 261 Fed. 250; *Ten Ecck* v. *Manning* (1893) 52 N. J. Eq. 47, 27 Atl. 900; *Welty* v. *Jacobs* (1898) 17 Ill. 624, 49 N. E. 72, yet where the vendor alone has signed a memorandum sufficient to bind him under the Statute of Frauds, equity will decree specific performance at the suit of the purchaser, as by making the defendant's performance conditioned on that of the plaintiff, the court protects both parties, and completely carries out the agreement between them. *Mason* v. *Decker* (1878) 72 N. Y. 595; *Smith* v. *Wilson* (1901) 160 Mo. 657, 61 S. W. 597. Analogous to this is a suit for specific performance against the vendor by the assignee of the vendee, where a similar decree would compel the defendant to do what he agreed to do, and give him the compensation agreed upon for his performance. *Moore* v. *Gariglietti* (1907) 228 Ill. 143, 81 N. E. 826. While there are a few early New York cases so holding, *Dodge* v. *Miller* (1894) 81 Hun 102, 30 N. Y. Supp. 726; see *Jones* v. *Lynds* (1838) 7 Paige Ch. 301 (*semble*), the trend of recent New York decisions has been to deny relief in such a case, on the ground that since the vendor could not compel specific performance by the assignee, unless the latter had assumed his assignor's obligation to purchase or there were a novation, see *Hugel* v. *Habel* (1909) 132 App. Div. 327, 329, 117 N. Y. Supp. 78, mutuality demands that specific relief be denied the assignee. *Genevetz* v. *Feiering* (1910) 136 App. Div. 736, 121 N. Y. Supp. 392; *Dittenfass* v. *Horsley* (1917) 177 App. Div. 143, 163 N. Y. Supp. 626, aff'd 224 N. Y. 560, 120 N. E. 861; *Levin* v. *Dietz* (1909) 194 N. Y. 376, 87 N. E. 454 (*semble*); *Wadick* v. *Mace* (1908) 191 N. Y. 1, 83 N. E. 57 (*semble*). The instant decisions, in refusing to follow the New York rule, as laid down by the higher courts, have reached a result that is both desirable and sound in principle.

WARRANTY—QUALITY OF GOODS—WHETHER JUDGMENT AGAINST VENDEE IS BINDING ON VENDOR.—The plaintiff sold a horse, purchased from the defendant, to one Walters, giving the same warranty of soundness as he had received from the defendant. Walters sued the plaintiff for breach of warranty and recovered, the defendant refusing to defend the suit after notice from the plaintiff. In an action by the plaintiff to recoup, the jury found that the horse was sound at the time the defendant sold him, but judgment was entered for the plaintiff *non obstante veredicto*. *Held*, on appeal, for the defendant. *Booth* v. *Scheer* (Kan. 1919) 185 Pac. 898.

It is well settled that a subvendee cannot recover from the original vendor on a breach of warranty but must look to the one from whom he purchased. *Thisler* v. *Keith* (1898) 7 Kan. App. 363, 52 Pac. 619; *Nelson* v. *Armour Packing Co.* (1905) 76 Ark. 352, 90 S. W. 288; but see *Childs* v. *O'Donnell* (1891) 84 Mich. 533, 538, 47 N. W. 1108. The original vendee may in turn recoup from his vendor upon a like warranty made to him. Williston, Sales, § 244. The decision in the instant case depended not on whether a warranty of quality runs or not—as was apparently the basis of the decision—since a subvendee was not suing, but, as Mason, *J.*, pointed out on p. 898, on whether the defendant, having notice of the suit against his vendee was under a